IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RESOLUTION TRUST CORPORATION, in its capacity as Receiver for Pima Federal Savings and Loan Association, Plaintiff/Appellant, v. RODGER J. CLIFTON and JEANETTE CLIFTON, husband and wife, Defendants/Appellees.	2 CA-CV 2006-0122 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C 283215

Honorable John E. Davis, Judge

AFFIRMED

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and

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H O W A R D, Presiding Judge.

¶1 Appellant The Cadle Company[1] appeals from the trial court's order granting appellees Rodger and Jeanette Clifton's motion to declare a 1994 judgment against them expired. Cadle argues the trial court erred in ruling the judgment was expired based on the Cliftons' motion rather than requiring them to file a separate declaratory judgment action. Cadle also argues that the trial court misapplied the burden of proof and incorrectly concluded that Cadle presented no evidence that the judgment was valid, that Cadle was not authorized to renew the judgment, and that laches did not apply. Because we conclude the trial court correctly decided the issues, we affirm its ruling.

¶2 The parties agree that in 1994 the trial court entered a stipulated deficiency judgment in favor of Resolution Trust Corporation (RTC) as receiver for Pima Federal

[1]Cadle's attorney filed a notice of appeal stating: "Notice is hereby given that the above named Plaintiff appeals to the Court of Appeals." In that document, "Resolution Trust Corporation, in its capacity as Receiver for Pima Federal Saving and Loan Association" was the "above named Plaintiff." "[T]echnical defects or omissions in a notice of appeal are usually not jurisdictional and do not render the notice ineffective absent prejudice to the appellee." *Schwab v. Ames Constr.*, 207 Ariz. 56, ¶ 11, 83 P.3d 56, 59 (App. 2004). When "[t]he appeal . . . falls within the subject matter jurisdiction of the court of appeals, and the court also retains personal jurisdiction over all parties," the relevant inquiry is whether the notice of appeal provided adequate notice to all of the parties. *Hill v. City of Phoenix*, 193 Ariz. 570, ¶ 8, 975 P.2d 700, 702 (1999). Because the Cliftons have not argued that they received inadequate notice of the appeal or that they were prejudiced by the defect, we do not address this issue further.

Savings and Loan Association against the Cliftons. Following entry of the judgment, the next filing in the case occurred in 1999 when Cadle filed an affidavit renewing the judgment. The events occurring between the 1994 judgment and the 1999 affidavit, particularly those concerning whether Cadle owned the judgment at the time it attempted to renew it, are disputed by the parties and are the subject of this appeal. Cadle filed a new affidavit of renewal in 2004.

¶3 In 2005, Cadle undertook to collect the judgment and served a subpoena on the Cliftons to obtain their financial records. The Cliftons moved to quash the subpoena and declare the judgment expired. They argued that because RTC had not assigned the judgment to Premier Financial Services before Premier assigned the judgment to Cadle, Cadle did not own the judgment when it filed the 1999 affidavit of renewal, and the judgment had thus expired. The trial court agreed and declared the judgment expired. Cadle now appeals from that ruling.

¶4 Cadle first argues the trial court erred when, on the Cliftons' motion, it ruled that the judgment had expired. Although the Cliftons counter that this argument is waived, Cadle argues that the Cliftons were required to bring a declaratory judgment action, and therefore, the trial court did not have jurisdiction to issue such a ruling. "[W]e independently review the jurisdiction of the trial court as an issue of law." *R.A.J. v. L.B.V.*, 169 Ariz. 92, 94, 817 P.2d 37, 39 (App. 1991). Although challenges to subject matter jurisdiction are not waived by a party's failing to raise them in the trial court, *Swichtenberg v. Brimer*, 171 Ariz. 77, 82, 828 P.2d 1218, 1223 (App. 1991), challenges to procedures

are so waived, *Health for Life Brands, Inc. v. Powley*, 203 Ariz. 536, ¶ 11, 57 P.3d 726, 728 (App. 2002).

¶5 "There are three kinds of jurisdiction: (a) Of the subject matter; (b) of the person; and (c) to render a particular judgment given." *Sil-Flo Corp. v. Bowen*, 98 Ariz. 77, 81, 402 P.2d 22, 25 (1965); *see also Fry v. Garcia*, 213 Ariz. 70, n.2, 138 P.3d 1197, 1199 n.2 (App. 2006). Subject matter jurisdiction is "'the power to hear and determine cases of the general class to which the particular proceedings belong.'" *Estes v. Superior Court*, 137 Ariz. 515, 517, 672 P.2d 180, 182 (1983), *quoting First Nat'l Bank & Trust Co. v. Pomona Mach. Co.*, 107 Ariz. 286, 288, 486 P.2d 184, 186 (1971). It "is established at the time of filing of the lawsuit and cannot be ousted by subsequent actions or events." *Resolution Trust Corp. v. Foust*, 177 Ariz. 507, 517, 869 P.2d 183, 193 (App. 1993). Subject matter jurisdiction is "'not confined to cases in which the particular facts constitute a good cause of action, but includes every issue within the scope of the general power vested in the court, by the law of its organization, to deal with the abstract question.'" *In re Wilcox Revocable Trust*, 192 Ariz. 337, ¶ 11, 965 P.2d 71, 74 (App. 1998), *quoting Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502, 507, 744 P.2d 29, 34 (App. 1987).

¶6 The superior court has subject matter jurisdiction of any case in which the amount in controversy is $1,000 or more. Ariz. Const. art. VI, § 14. Consequently, it acquired subject matter jurisdiction of this case when it was filed in 1991 and retained it until the notice of appeal was filed in June 2006. *See Foust*, 177 Ariz. at 517, 869 P.2d at 193. And, because the trial court had jurisdiction to enforce its judgment, *see Daley v.*

Earven, 166 Ariz. 461, 463, 803 P.2d 454, 456 (App. 1990), it also had jurisdiction to enter the particular judgment given, that the judgment had expired under A.R.S. § 12-1612.

¶7 Cadle strenuously argues that the superior court has jurisdiction of declaratory judgment actions, *see* Arizona Constitution article VI, § 14; A.R.S. §§ 12-1831 through 12-1846, but claims an independent action was required. But the trial court's jurisdiction over declaratory judgment actions reinforces our conclusion that the trial court had jurisdiction to enter the particular judgment given in this case. *See Elec. Design & Mfg. Inc. v. Konopka*, 649 N.E.2d 619, 624 n.3 (Ill. App. Ct. 1995) ("[R]equesting a declaration of rights pursuant to a motion for preliminary injunction . . . raises procedural concerns."). Moreover, as the Cliftons noted at oral argument, their request that the court "declare" the judgment expired, without reference to the declaratory judgment act, did not convert the motion into a declaratory judgment action.

¶8 Nevertheless, Cadle relies on *Long v. Town of Thatcher*, 62 Ariz. 55, 153 P.2d 153 (1944), to support its position that the trial court lacked jurisdiction. In *Long*, the supreme court held that because "[t]he complaint asked for declaratory judgment, . . . the trial court [did not have] jurisdiction to render such a judgment until the cause was at issue and tried or the facts established." *Id*. at 60, 153 P.2d at 155. But, unlike the situation here, the plaintiff in *Long* had filed a declaratory judgment action, and the supreme court merely concluded that the trial court had erred in granting the judgment before any answer was filed or trial held, as required by statute. *Id*. *Long* does not, as Cadle suggests, support the

proposition that the sole procedure that vests subject matter jurisdiction in the superior court to determine the validity of the renewal of a judgment is a declaratory judgment action.

¶9 Moreover, *Long* preceded the more recent line of cases discussed above clarifying the use of the term "jurisdiction." *See Taliaferro v. Taliaferro*, 186 Ariz. 221, 222-23, 921 P.2d 21, 22-23 (1996) (courts have long history of using term "jurisdiction" in a variety of contexts). Because the superior court has jurisdiction to rule a judgment has expired, any error claimed by Cadle regarding the form of the proceedings is procedural. And, because Cadle did not raise this argument below, it is waived. *See Van Loan v. Van Loan*, 116 Ariz. 272, 274, 569 P.2d 214, 216 (1977) (arguments raised for the first time on appeal are waived); *see also Powley*, 203 Ariz. 536, ¶ 11, 57 P.3d at 728 (challenges to procedures are waived if not raised in trial court).

¶10 Cadle cites numerous out-of-state cases for the proposition that declaratory judgments must be sought in pleadings and not on motion to the court. But none of the cases Cadle cites supports the proposition that the trial court lacks jurisdiction to award the type of remedy granted here in the absence of a declaratory judgment action, or addresses the issue of waiver. *See Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148, 1155 (5th Cir. 1992); *Presbytery of N.J. of the Orthodox Presbyterian Church v. Florio*, 902 F. Supp. 492, 502 (D.N.J. 1995), *aff'd sub nom. Presbytery of N.J. of the Orthodox Presbyterian Church v. Whitman*, 99 F.3d 101 (3d Cir. 1996); *Int'l Bhd. of Teamsters v. E. Conference of Teamsters*, 160 F.R.D. 452, 456 (S.D.N.Y. 1995); *Barmat, Inc. v. United States*, 159 F.R.D. 578, 582 (N.D. Ga. 1994); *Simmons v. Wetherall*, 491

A.2d 1109, 1110 n.4 (Conn. App. Ct. 1985); *Starvest U.S. Inc. v. Polfer*, 694 So. 2d 875, 875-76 (Fla. Dist. Ct. App. 1997). Therefore, those cases do not require or even support a different conclusion.

¶11 Cadle next argues that the trial court erred by imposing the burden of proof on it. Questions regarding the burden of proof are issues of law that we review de novo. *Am. Pepper Supply Co. v. Fed. Ins. Co.*, 208 Ariz. 307, ¶ 8, 93 P.3d 507, 509 (2004).

¶12 Judgments are "presumptively valid"; consequently, the party challenging the validity of a judgment bears the burden of "prov[ing] facts that would show it to be invalid," i.e., establishing a prima facie case that the judgment is invalid. *Parks v. Rawson*, 134 Ariz. 495, 498, 657 P.2d 908, 911 (App. 1982); *see also* Daniel J. McAuliffe & Shirley J. Wahl, *Arizona Civil Trial Practice* § 21.9, at 51 (2d ed. 2001) ("Initially, the plaintiff is required to establish a *prima facie* case."). "'*[P]rima facie*,' as used in . . . legal phraseology, merely mean[s] a fact presumed to be true unless disproved by some evidence to the contrary, but it always implies that the proper party shall have the opportunity of offering proof in rebuttal of the *prima facie* fact." *Powell v. Gleason*, 50 Ariz. 542, 549, 74 P.2d 47, 51 (1937); *see also Hunsaker v. Smith*, 1 Ariz. App. 51, 54, 399 P.2d 185, 188 (1965) ("The words . . . 'prima facie' as used in statutes merely mean a fact presumed to be true unless disproved by some evidence to the contrary.").

¶13 "Once it has been determined that the plaintiff has established a *prima facie* case, the burden of going forward is upon the defendant; if the defendant produces no evidence, he or she takes the risk of plaintiff successfully moving for judgment as a matter

of law." McAuliffe, *supra*, at 51. Thus, the burden of proof does not change, even though the burden of producing evidence may have shifted. *Harvey v. Aubrey*, 53 Ariz. 210, 214, 87 P.2d 482, 483 (1939); *see also* McAuliffe, *supra*, at 51.

¶14 The Cliftons argued to the trial court that the judgment had expired because Cadle did not own the judgment when it attempted to renew it in 1999. They presented several exhibits to the trial court, which support the following time line:

April 4, 1994	RTC's stipulation and order to continue trial stated that RTC still owned the Clifton debt
August 1, 1994	Judgment was entered for RTC
July 13, 1999	That judgment was purportedly assigned by Premier to Cadle
July 22, 1999	An Affidavit for Renewal of Judgment was filed on behalf of Cadle as Assignee of RTC
August 1, 1999	Fifth anniversary of date of the judgment
October 4, 1999	The judgment lien was assigned by the original plaintiff RTC/FDIC to Premier
July 18, 2002	Cadle filed a "Corrected Assignment of Judgment Lien" backdating the RTC assignment to Premier to March 8, 1994

¶15 Even though the Cliftons bore the ultimate burden of proving facts establishing the judgment was invalid, the trial court found, based on the Cliftons' documented time line, that they made a prima facie showing to support their contention. Once the trial court concluded a prima facie case had been presented, it properly asked Cadle to produce

evidence refuting the Cliftons' version of events. Therefore, the trial court correctly assigned the burdens of proof and production.

¶16 Cadle next argues that the trial court erred when it concluded "there is no credible evidence to document that the assignment from RTC to Premier occurred prior to the 1999 renewal." The parties in this case each provided the court copies of documents that they believed supported their respective positions and allowed the court to make factual determinations based on those documents and without any other evidence. Although an evidentiary hearing should usually be employed to determine factual issues, the parties allowed the trial court to make factual determinations based on this documentary evidence. Therefore, we review the trial court's findings of fact under a clearly erroneous standard. *See Brake Masters Sys., Inc. v. Gabbay*, 206 Ariz. 360, ¶ 16, 78 P.3d 1081, 1086 (App. 2003); *see also Andrews v. Blake*, 205 Ariz. 236, ¶ 57, 69 P.3d 7, 23 (2003) (trial court has discretion to hold evidentiary hearing to resolve issues of fact); *Maxwell v. Fid. Fin. Servs., Inc.*, 184 Ariz. 82, 87, 907 P.2d 51, 56 (1995) (court need not always have evidentiary hearing to make findings of fact, and such findings of fact are accorded usual standard of review). A finding is not clearly erroneous if substantial evidence supports it. *In re Estate of Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d 704, 709 (1999). Substantial evidence is evidence from which a reasonable trial court could reach the decision it did. *Id.; see also* Ariz. R. Civ. P. 52(a), 16 A.R.S., Pt. 1. The appellate court will not reweigh evidence. *Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d at 709.

¶17 The trial court found that, based on the documents provided and argument in their memoranda, "[the Cliftons] made a prima facie showing that Cadle's attempted renewal of the judgment was not valid." The trial court then made the following factual findings:

> The documents provided by [Cadle] . . . do little to clarify when Premier became the assignee of the judgment from RTC . . . . [T]he Assignment and Bill of Sale does not clearly identify the asset as the one in question, and there is no Exhibit A as referenced in the first paragraph of the Assignment. Exhibit 5 and its attachments are in large part illegible and unintelligible. [Cadle]'s counsel admits that he does not know whose handwriting is on the RTC documents. . . .
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> Stipulations and continuances in the Court from 1993 and 1994 refer to a tentative settlement agreement pending approval from the RTC . . . , a tentative settlement agreement and the asset in question being purchased and/or managed by a new entity and plaintiff's attorney not having authority to approve the settlement . . . , a tentative settlement agreement and the asset in question being transferred to the RTC in Denver and awaiting RTC approval of the settlement. . . . There is no indication of an assignment to Premier.
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> The Renewal of Judgment Affidavit on July 22, 1999, lists Cadle Company as the assignee of RTC. However, there was no assignment directly from RTC to Cadle, and no indication at that time that RTC had assigned the judgment to Premier . . . . The Corrected Assignment of Judgment Lien filed August 26, 2002, makes March 8, 1994, the effective date of the assignment from RTC to Premier . . . . However, there is no credible evidence to document that the assignment from RTC to Premier occurred prior to the 1999 renewal.

¶18 Cadle's argument essentially requests that we reweigh the evidence. Having reviewed the exhibits presented to the trial court, we cannot say that its factual determinations regarding the Clifton judgment are not supported by substantial evidence and are clearly erroneous. Cadle alleges RTC assigned the debt to Premier on March 8, 1994,

but RTC's stipulation on April 4, 1994, after the alleged assignment, stated that RTC still owned the Clifton debt. Premier then attempted to assign the judgment to Cadle in July 1999, and shortly thereafter, Cadle attempted to renew the judgment. But the affidavit of renewal stated that Cadle was RTC's assignee and did not mention Premier. Then, on October 4, 1999, the judgment lien was assigned by RTC to Premier. In the 2004 renewal affidavit, Cadle stated that the judgment was renewed by affidavit in 1999 and "[t]hereafter" assigned to Premier. Because substantial evidence supports the trial court's order, we reject Cadle's contention that the court erred in weighing the evidence.[2]

¶19 Cadle also argues that if it "failed to make as complete [a] presentation of the assignment documentation as the trial court would have preferred, it was only because Cadle was denied the panoply of discovery and procedural devices that would have been available to it in a full lawsuit." But we have already concluded that the trial court had jurisdiction to rule on the motion, that the parties allowed it to do so without objection, and that it properly shifted the burden of producing evidence to Cadle after the Cliftons had made a prima facie case that the judgment was invalid.[3]

¶20 Cadle next argues that the trial court erred when it concluded that Cadle was not authorized to renew the judgment in 1999. Cadle argues that "even if the relevant

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[2]Cadle cites no authority for the proposition that as the assignee of the Clifton debt it is also assignee of the Clifton judgment later entered in RTC's name.

[3]Because we have concluded that the trial court correctly found the judgment had expired, we need not address Cadle's argument that "[e]ven if the [c]ourt properly quashed the subpoena, it should have done so without prejudice."

documentation was insufficient in 1994 to pass legal title from the [RTC/]FDIC to Premier, equitable ownership nonetheless passed." But Cadle did not argue to the trial court that Premier had equitable title, even if it did not have legal title, to the Clifton judgment when it assigned that judgment to Cadle. Because we will not consider arguments raised for the first time on appeal, this argument is waived. *See Souza v. Fred Carries Contracts, Inc.*, 191 Ariz. 247, 255, 955 P.2d 3, 11 (App. 1997).

¶21 Finally, Cadle argues that the trial court erred when it concluded the doctrine of laches is inapplicable. The court found that the defense of laches was inapplicable because the "defense is one typically tendered by a defendant. It is inapplicable here, since there were ongoing settlement neg[oti]ations in this case, and [Cadle] did not file its request for supplemental proceedings and seek to enforce the judgment until December 2005." We review a trial court's decision that laches is inapplicable for an abuse of discretion. *McComb v. Superior Court*, 189 Ariz. 518, 525, 943 P.2d 878, 885 (App. 1997). "The defense of laches consists of two essential elements: (1) unreasonable delay, and (2) disadvantage or prejudice to the party asserting the defense." *Tovrea v. Umphress*, 27 Ariz. App. 513, 521, 556 P.2d 814, 822 (1976). Determining whether laches applies is a factual determination, made on a case-by-case basis. *Id*.

¶22 But, as the Cliftons point out, in *Crye v. Edwards*, 178 Ariz. 327, 328, 873 P.2d 665, 666 (App. 1993), Division One of this court addressed the same issue presented here: whether laches precludes a party from contesting the validity of an attempted judgment renewal years later and after other renewals have been made. Division One held that Crye's

> laches argument wrongly presupposes that a judgment debtor must act to profit from a judgment creditor's failure to renew a judgment. Under [A.R.S. § 12-1612], it is the judgment creditor who must act to prevent expiration, not the debtor who must act to achieve it. If the creditor fails to renew the judgment, it expires. The judgment debtor need do nothing.

Id. at 328-29, 873 P.2d at 666-67 (footnote omitted). Therefore, Cadle cannot assert the defense of laches against the Cliftons because the Cliftons had no obligation to contest the validity of the judgment until Cadle undertook to enforce it.

¶23 For the foregoing reasons, the trial court's ruling is affirmed.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

_____
JOHN PELANDER, Chief Judge

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GARYE L. VÁSQUEZ, Judge